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IN THE

Supreme Court of the United States

No. 995, October Term, 1965

MARIA RIVERA DELGADO,
Petitioner,

v.

THE SUPREME COURT OF PUERTO RICO,
Respondent.

PETITION FOR WRIT OF CERTIORARI

VICENTE GEIGEL POLANCO
Box 4029, San Juan, Puerto Rico
Attorney for Petitioner

IN THE

Supreme Court of the United States

No. ....., October Term, 1965

MARIA RIVERA DELGADO,
Petitioner,

v.

THE SUPREME COURT OF PUERTO RICO,
Respondent.

PETITION FOR WRIT OF CERTIORARI

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To the Hon. Court:

A writ of certiorari is sought in this case to review the order entered by the Supreme Court of Puerto Rico on september 16, 1965.

Jurisdiction of the Court

The jurisdiction of this Hon. Court is invoked on the following grounds:

(a) The order sought to be reviewed was entered by the

Supreme Court of Puerto Rico on September 16, 1965. The motion for reconsideration, filed by petitioner on October 26, 1965, and by the Solicitor General on October 19, 1965, were disposed of on November 9, 1965, and October 22, 1965, respectively.

(b) On motion of the petitioner on September 30, 1965, the Supreme Court of Puerto Rico granted a stay of the Mandate until December 15, 1965, to file a petition for certiorari before this Hon. Court.

(c) The jurisdiction of this Court rests on 28 U. S. C. A., Section 1258.

Questions Presented for Review

A. On June 25, 1964, The People of Puerto Rico filed an information in this case against the defendant-appellant, María Rivera Delgado, for the crime of petit larceny. The trial was held before the District Court of Puerto Rico, Río Piedras Part. The Court was presided by the Hon. Pedro Pérez Pérez, District Judge. The Court sentenced the defendant to pay fine of $25.00 or, in default thereof, to one day in jail for each unpaid dollar.

The defendant considered that the trial court committed manifest errors in its weighing of the evidence, as well as various errors of law, and appealed from its judgment to the Hon. Superior Court of Puerto Rico, San Juan Part.

Defendant-appellant assigned the following errors as committed by the District Court, Río Piedras Part:

1. The trial court committed error in dismissing defendant's motion to the effect that the information did not allege the essential elements of the crime of petit larceny.
2. The Court committed error in refusing to acquit the defendant paremptorily, inasmuch as The People failed to prove the essential elements of the crime of larceny.
3. The evidence introduced was insufficient to convict the defendant of the crime of petit larceny.
4. The evidence for the defense showed beyond reasonable doubt that the defendant did not commit the crime with which she was charged.

5. The evidence for The People and the evidence for the defense show that there is reasonable doubt and such doubt must be decided in favor of the defendant.

6. The Honorable trial Judge subjected the defense witnesses to an intense examination of such a nature it violated the defendant's substantial rights.

7. The trial Court committed error in subjecting the witnesses for the defense to an examination that violated the constitutional right of the defendant to a due process of law.

On June 24, 1965, the Honorable Superior Court of Puerto Rico, San Juan Part, Criminal Section, presided by the Hon. Judge César Bobonis-Díaz, entered Judgment affirming the one entered by the Río Piedras Part of the District Court against appellant herein, in case No. 64-4897, for the crime of petit larceny.

On July 8, 1965, appellant moved for reconsideration of the judgment and in support of her motion for reconsideration she specifically referred therein to the request of the Hon. District Attorney who moved for the reversal of the judgment on the basis of **People v. Nieves Alvelo** 88 P.R.R.___, decided April 1964; **People v. Aletriz**, 85 P. R. R.____, and **People v. de Jesús Villanueva**, decided May 29, 1964.

On July 12, 1965, the Superior Court, San Juan Part, denied the motion for reconsideration.

Statues Involved

B. The law applicable to the matter presented for review is to be found in Rule 217, Rules of Criminal Procedure of Puerto Rico (34 L.P.R.A. App.) and Rule 15 of the Rules of the Supreme Court of Puerto Rico (4L.P.R.A.App.I), effective since July 1, 1961. Article II, Section 7 of the Constitution of the Commonwealth of Puerto Rico, Amendment V and XIV of the Constitution of the United States, Section 426, Puerto Rico Penal Code.

The information filed against appellant herein does not allege the essential elements of the crime of petit larceny with which defendant was charged. The law defines the crime of larceny as "the felonious stealing, taking, carrying,

leading, or driving, away, the personal property of another". Section 420, Penal Code. However, this Hon. Court has said: "The criminal intent to deprive the owner permanently of his property is an essential element of the crime of larceny". People v. Acevedo, 43. - P.R.R. 340.

"Where in a prosecution for larceny the evidence only shows possession by the defendants of the stolen object, withou any other circumstance connecting him with the theft, it is not sufficient". People v. Domínguez, 36 P.R.R. 419. We contend that the crime of larceny includes a series of circumstances constituting essential elements and that in the absence of any one of these, the crime, is not committed. People v. Andrade, CR-62-282 (June 28, 1963), Bar Association Ref. 1963-165: People v. Nieves, CR-62-99 (September 30, 1963), Bar Association Ref. 1963-156.

Statement of the Case

C. Defendant entered Bargain Town, a commercial establishment, lawfully obtained certain articles and got into line at one of the cash registers in order to pay for them. Defendant was accompanied by her minor child, Awilda López, and when the latter went to a refreshment machine, her mother went after her among a large crowd of people, intending to return to the line to pay. It was at that moment that she was grabbed by Antonio Rodríguez Ocasio, an employee of the establishment, who, without giving the customer any explanation, pushed her and led her into the store office. In our opinion it is the employee who is responsible for the crime, by overdoing his duties.

In these cases, the felonious intent of converting the property, preceded by an unlawful carrying away, are essential elements of the crime of larceny and they must be alleged and proved. The People did not prove that the carrying away was unlawful or that the defendant converted the property to her own use; on the other hand, the defense showed beyond reasonable doubt that the crime charged was not committed.

The evidence for The People as a whole was insufficient to convict the defendant of the crime of petit larceny. A per-

son who proves that her purpose in leaving the line was to look for her minor child where a large crowd had gathered, did not have the criminal intent of performing or committing an unlawful act such as larceny. A specific intent is a matter of fact an essential element of the crime of larceny. "A specific intent is manifested by the means, manner, and circumstances of performing an act." **People** v. **Colón**, 80 P.R.R. 351.

We are of the opinion that in this case the procedings were not conducted in the mannner prescribed by law. In our criminal procedure the District Judges must make the investigation, examining the witnesses for the prosecution and cross-examining the witnesses for the defense. Now, we consider that this must not be stretched beyond what is reasonable and fair in order to discover the truth. When the cross-examination of the witnesses for the defense is of such a nature that it places the witnesses and the defendant in one and the same position, we think that the trial is not the impartial trial to which the defendant is constitutionally entitled.

We again emphasize the fact that a judge who is to weigh the evidence must not act as though he were the prosecuting attorney. We respectfully affirm that the cross-examination conducted in this case in the District Court, Río Piedras Part, violated the defendant's substantial rights.

Our Constitution guarantees an impartial trial by virtue of the due process of law. In Puerto Rico a District Judge is put in the position of being a judge, an arbitrator, and at the same time he must act as a prosecuting attorney to ascertain the facts, but in the investigation of facts he must not take the position of ridiculing and contradicting the witnesses for the defense; if such thing happens, the constitutional principle of a due process of law is violated. The extent to which the cross-examination of witnesses for the defense by a District Judge may reach should be established once and for all. As well put by the Hon. Zoilo Dueño González, San Juan District Attorney in this case:

"With respect to the Court's cross-examination of the child, Awilda López, defendant's daughter, as well as of de-

fendant herself — which we do not copy in order not to lengthen this brief — we think that if this Hon. Court reads said testimonies it must unavoidably reach the conclusion that the trial judge went beyond what is reasonable in the sacred mission with which the law entrusts him, thereby depriving the defendant of an impartial and fair trial which our Constitution, as well as our procedural laws, guarantee to every defendant."

"We think that the instant case presents the same situation involved in **People v. Nieves Alvelo**, decided September 30, 1963; **People v. Martínez Acevedo**, decided April 25, 1963; **People v. Aletriz**, decided June 12, 1962, and **People v. de Jesús Villanueva**, decided May 29, 1964, where, reversing the judgments and ordering new trials for the defendants, our Supreme Court stated:

> " '...the trial judge submitted the witnesses to an improper interrogatory that deprived the appellant of an impartial trial and a fact discharged the mission reserved by law to the prosecuting attorney.' "

A literal copy of the Brief of the Hon. Zoilo Dueño González, District Attorney, is attached hereto. A literal copy of the Judgment entered on June 24, 1965, is also attached hereto.

D. The Federal questions sought to be reviewed were first raised in the Brief of the Petitioner submitted to the Superior Court of Puerto Rico, San Juan Part (Record Pages 2 and 3). In the judgment dated June 24, 1965, the Superior Court as Court of appeals ruled against the petitioner (Record pages 8 to 11). The same federal and constitutional question were raised in the Petition for Writ of Certiorari before the Supreme Court of Puerto Rico (Record pages 1 to 36), with a specification of them in the assignment of errors (Record pages 2 to 3). The Supreme Court of Puerto Rico ruled against the petitioner refusing to issue a writ of certiorari, thus affirming the judgment appealed from (attached to the record). The federal questions were further raised before the Supreme Court of Puerto Rico in a Motion for Reconsideration filed by

the petitioner and a Motion for Reconsideration filed by the Solicitor General of Puerto Rico. (Motion for Reconsideration Attached to the Record).

Argument

The District Court of Puerto Rico, Río Piedras Part, found the defendant, María Rivera Delgado, guilty of the crime of petit larceny and consequently sentenced her to pay a fine of $25.00 or, in default thereof, to the corresponding subsidiary imprisonment. She appealed.

The Prosecuting Attorney agrees with Counsel for Petitioner as well as the Solicitor General of Puerto Rico, and all stated the following principles of law.

"6. The Honorable trial Judge subjected the defense witnesses to an intense examination of such nature that it violated the defendant's substantial rights."

"7. The trial Court committed error in subjecting the witnesses for the defense to an examination that violated the Constitutional right of the defendant to a due process of law." (Record pages 14-20.)

"as may be seen both errors assigned involve the undue participation of the lower court in the cross-examination of the witnesses for the defense, in such a manner that the defendant was deprived of an impartial and fair trial thereby."

"In order to determine correctly the facts on which these errors are based, we have thoroughly and patiently read the transcript of the evidence attached to the record which includes all the testimonies offered, both of the witnesses for the prosecution and for the defense, and it has led me to the conclusion that actually —and perhaps unconsciously— the Judge who presided the hearing of the case overstretched his mission and, consequently, the defendant did not have an impartial and fair trial."

"Although the examination of the witnesses for The People could to a certain point be justified if we consider that in that Court the position of prosecuting attorney does not exist and no private prosecuting attorney participated in the case, we must conclude that the cross-examination of the wit-

nesses for the defense went beyond that is reasonable and that the Court unconsciously —we repeat— showed apparent prejudice, but prejudice nonetheless, detrimental to defendant's rights, discharging a mission that clearly corresponded to the prosecuting attorney."

Our Constitution guarantees the fundamental principle that — "The dignity of the human being is inviolable. All men are equal before the law." However, the trial Judge denied the fundamental rights of the defendant by submitting her to a partial trial and depriving her of the right to liberty without the due process of law. (Article II Bill of Rights-Section I and 7 Constitution of the Commonwealth of Puerto Rico, Law of Puerto Rico annoted, Section I and 7).

The defendant was at a disadvantage before the Hon. District Judge by virtue of the type of interrogatory he was conducting. The accused, represented by her counsel, was prevented from raising any objections before the Hon. Judge, under pain of contempt of court. This procedure, in our opinion, violates the constitutional principle of due process of law.

"It is said to be difficult to frame a definition of 'due process of law' which shall be perspicuous, comprehensive, and satisfactory. However the spirit of these provisions, as applied to criminal prosecutions, is, in brief, that no person can be made to suffer for a criminal offense unless the penalty be inflicted by 'due process of law', that is to say, in the due course of legal proceedings according to the rules and forms which have been established for the protection of private rights. A criminal prosecution based upon a law which is not in violation of the Constitution, and conducted according to the settled course of judicial proceedings as established by the law of the state, so long as it includes a notice and hearing or an opportunity to be accorded before a court of competent jurisdiction, according to established modes of procedure, is 'due process' in the constitutional sense." **People v. Coleman, 145 Cal. 609, 614, 79 Pac. 283; Kallock v. Superior Court 56 Cal 229, 240; Hurtado v. People of California. 110 U.S. 516,535, 28 L.Ed. 232.**

The purpose of the constitutional guaranttee of the due

process of law is to protect citizens against arbitrary actions and abuse of power on the part of the legislative, executive, and judicial branches. It is intended to protect the individual rights of man. It has been so held in California from where our Penal Code came, in **Hutchinson v. Cauchlin,** 42 Cal. App. 664, 184 Pac. 435 **American Land v. Zeiss,** 219 U.S.47, 55L. Ed.82, 31 Sup. Ct. Rep 200; **Beck v. Ransome Crummey,** 42 Cal. App. 74, 184 Pac. 431.

With respect to this problem, the Supreme Court of California has stated:

"The essential rights of the individual can not be taken away by any mere declaration of legislative will. The guaranty is a direct prohibition upon the legislature from passing any law depriving any person or class of person in prison, selling or holding in slavery, or in any other way taking away their liberty or divesting them of property, whether real or personal, except by due process and regular proceeding usually only upon the judgment of a court of justice of competent jurisdiction, rendered in proceedings in which such person shall have had his rights fairly adjusticated in accordance with the established rules of law applicable to such cases." **Cohen v. Wright,** 22 Cal. 293.

The provisions of the Fifth and Fourteenth Ammendments to the Constitution of the United States are identical to the provisions of 27 of our Constitution: "No person shall be deprived of his liberty or property without due process of law. No person in Puerto Rico shall be denied the equal protection of the laws." These rights of defendants must be safeguarded by the Courts and can not depend upon the whim of a judge or on the will of a judge working prejudice to the defendant's fundamental rights.

"If his right to a hearing depends upon the will or caprice of others or upon the discretion or will of the judge who is to make a decision upon the issue, he is not protected in his constitutional rights." **Matter of Lambert,** 134 Cal. 626, 86 Am. St. Rep. 296, 55 L.R.A. 856, 66 Pac. 851.

WHEREFORE, petitioner respectfully prays this Hon. Court to issue a writ of certiorari to review the order entered

by the Supreme Court of Puerto Rico in the above-entitled cause.

San Juan, Puerto Rico, this 7th day of December, 1965.

Respectfully submitted,

Vicente Géigel-Polanco
Attorney for petitioner
Box 4029, San Juan, P. R.

CERTIFICATE OF SERVICE

Copy of this Petition for Writ of Certiorari has been served by mail on this date on the Solicitor General of Puerto Rico, Department of Justice, San Juan, Puerto Rico.

San Juan, Puerto Rico, this 7th day of December, 1965.

Vicente Géigel-Polanco
Attorney for petitioner
Box 4029 - San Juan, Puerto Rico

IN THE

SUPREME COURT OF THE UNITED STATES

The People of Puerto Rico,
Plaintiff-appellee

v.

MARIA RIVERA DELGADO,
Defendant-appellant

RECORD OF THE SUPREME COURT OF PUERTO RICO

VICENTE PEREZ DIAZ
Counsel for Appellant
P. O. Box 1155
Río Piedras, Puerto Rico

SOLICITOR GENERAL OF PUERTO RICO
Counsel for Appellee
P. O. Box 192
San Juan, Puerto Rico

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IN THE

SUPREME COURT OF PUERTO RICO

The People of Puerto Rico,
Plaintiff-appellee

v. **CE-65-19** **Certiorari**

MARIA RIVERA DELGADO,
Defendant-appellant

PETITION

To the Hon. Court:

Now comes appellant herein through her undersigned counsel and respectfully states, alleges, and prays:

FACTS

On June 25, 1964, The People of Puerto Rico filed an information in this case against the defendant-apellant, María Rivera Delgado, for the crime of petit larceny. The trial was held before the District Court of Puerto Rico, Río Piedras Part. The Court was presided by the Hon. Pedro Pérez Pérez, District Judge. The Court sentenced the defendant to pay a fine of $25.00 or, in default thereof, to one day in jail for each unpaid dollar.

The defendant considered that the trial court committed

manifest errors in its weighing of the evidence, as well as various errors of law, and appealed from its judgment to the Hon. Superior Court of Puerto Rico, San Juan Part.

Defendant-appellant assigned the following error as committed by the District Court, Río Piedras Part:

1. The trial court committed error in dismissing defendant's motion to the effect that the information did not allege the essential elements of the crime of petit larceny.

2. The Court committed error in refusing to acquit the defendant peremptorily, inasmuch as The People failed to prove the essential elements of the crime of larceny.

3. The evidence introduced was insuficient to convict the defendant of the crime of petit larceny.

4. The evidence for the defense showed beyond reasonable doubt that the defendant did not commit the crime with which she was charged.

5. The evidence for The People and the evidence for the defense show that there is reasonable doubt and such doubt must be decided in favor of the defendant.

6. The Honorable trial Judge subjected the defense witnesses to an intense examination of such a nature that it violated the defendant's substantial rights.

7. The trial court committed error in subjecting the witnesses for the defense to an examination that violated the constitutional right of the defendant to a due process of law.

On June 24, 1965, the Honorable Superior Court of Puerto Rico, San Juan Part, Criminal Section, presided by the Hon. Judge César Bobonis Díaz, entered Judgement affirming the one entered by the Río Piedras Part of the District Court against appellant herein, in case No. 64-4897, for the crime of petit larceny.

On July 8, 1965, appellant moved for reconsideration of the judgment and in support of her motion for reconsideration she specifically referred therein to the request of the Hon. District Attorney who moved for the reversal of the judgment on the basis of **People v. Nieves Alvelo**, 88 P.R.R._____. decided April 1964; **People v. Aletriz**, 85 P.R.R._____; and **People v. de Jesús Villanueva**, decided May 29, 1964.

On July 12, 1965, the Superior Court, San Juan Part, denied the motion for reconsideration. It is to review the Judgment and the Order denying the Motion for Reconsideration entered by the Honorable trial court, that a writ for certiorari is prayed for. The Order disposing of the Motion for Reconsideration was filed July 12, 1965.

GROUNDS OF LAW

1. Appellant bases this petition for certiorari on the following legal provisions:

This petition is authorized by Rule 217, Rules of Criminal Procedure of Puerto Rico, and Rule 15 of the Rules of the Supreme Court of Puerto Rico, effective since July 1, 1961.

The information filed against appellant herein does not allege the essential elements of the crime of petit larceny with which defendant was charged. The law defines the crime of larceny as "the felonious stealing, taking, carrying, leading, or driving away the personal property of another." Section 426, Penal Code. However, this Hon. Court has said: "The criminal intent to deprive the owner permanently of his property is an essential element of the crime of larceny." **People v. Acevedo**, 43 P.R.R. 325.

Where in a prosecution for larceny the evidence only shows possession by the defendants of the stolen object, without any other circumstance connecting him with the theft, it is not sufficient." **People v. Domínguez**, 36 P.R.R. 419. We contend that the crime of larceny includes a series of circumstances constituting essential elements and that in the absence of any one of these, the crime is not committed. **People v. Andrade**, CR-62-282 (June 28, 1963), Bar Association Ref. 1963-143; **People v. Torres**, CR-62-399 (October 2, 1963), Bar Association Ref. 1963-165; **People v. Nieves**, CR-62-99 (September 30, 1963), Bar Association Ref. 1963), Bar Association Ref. 1963-156.

Defendant entered Bargain Town, a commercial establishment, lawfully obtained certain articles and got into line at one of the cash registers in order to pay for them. Defendant

was accompanied by her minor child Awilda López, and when the latter went to a refreshment machine, her mother went after her among a large crowd of people, intending to return to the line to pay. It was at that moment that she was grabbed by Antonio Rodríguez Ocasio, an employee of the establishment, who, without giving the customer any explanation, pushed her and led her into the store office. In our opinion it is the employee who is responsible for the crime, by overdoing his duties.

In these cases, the felonies intent of converting the property, preceded by an unlawful carrying away, are essential elements of the crime of larceny and they must be alleged and proved. The People did not prove that the carrying away was unlawful or that the defendant converted the property to her own use; on the other hand, the defense showed beyond reasonable doubt that the crime charged was not committed.

The evidence for The People as a whole was insufficient to convict the defendant of the crime of petit larceny. A person who proves that her purpose in leaving the line was to look for her minor child where a large crowd had gathered, did not have the criminal intent of performing or committing an unlawful act such as larceny. A specific intent is as a matter of fact an essential element of the crime of larceny. "A specific intent is manifested by the means, manner, and circumstances of performing an act." People v. Palóu, 80 P.R.R. 351.

We are of the opinion that in this case the proceedings were not conducted in the manner prescribed by law. In our criminal procedure the District Judges must make the investigation, examining the witnesses for the prosecution and cross-examining the witneses for the defense. Now, we consider that this must not be stretched beyond what is reasonable and fair in order to discover the truth. When the cross-examination of the witnesses for the defense is of such a nature that it places the witnesses and the defendant in one and the same position, we think that the trial is not the impartial trial to which the defendant is constitutionally entitled.

We again emphasize the fact that a judge who is to weigh the evidence must not act as though he were the prosecuting attorney. We respectfully affirm that the cross-examination conducted in this case in the District Court, Río Piedras Part, violated the defendant's substantial rights.

Our Constitution guarantees an impartial trial by virtue of the due process of law. In Puerto Rico a District Judge is put in the position of being a judge, an arbitrator, and at the same time he must act as a prosecuting attorney to ascertain the facts; but in the investigation of facts he must not take the position of ridiculing and contradicting the witnesses for the defense; if such thing happens, the constitutional principle of a due process of law is violated. The extent to which the cross-examination of the witnesses for the defense by a District Judge may reach should be established once and for all. As well put by the Hon. Zoilo Dueño González, San Juan District Attorney in this case:

> "With respect to the Court's cross-examination of the child, Awilda López, defendant's daughter, as well as of defendant herself — which we do not copy in order not to lengthen this brief — we think that if this Hon. Court reads said testimonies it must unavoidably reach the conclusion that the trial judge went beyond what is reasonable in the sacred mission with which the law entrusts him, thereby depriving de defendant of an impartial and fair trial which our Constitution, as well as our procedural laws, guarantee to every defendant."

> "We think that the instant case presents the same situation involved in **People v. Nieves Alvelo**, decided September 30, 1963; **People v. Martínez Acevedo**, decided April 25, 1963; **People v. Aletriz**, decided June 12, 1962, and **People v. de Jesús Villanueva**, decided May 29, 1964, where, reversing the judgment and ordering new trials for the defendants, our Supreme Court stated:

> > "'... the trial judge submitted the witnesses to an improper interrogatory that deprived the appellant of an impartial trial and in fact discharged

the mission reserved by law to the prosecuting attorney.'"

A literal copy of the Brief of the Hon. Zoilo Dueño González, District Attorney, is attached hereto. A literal copy of the Judgment entered on June 24, 1965, is also attached hereto.

OATH

I, Vicente Pérez Díaz, do under oath declare: that I am apellant's counsel in this case; that the facts alleged in the foregoing Petition are true according to my best knowledge and belief; that I take this oath, instead of apellant, because I am better acquainted than her of the facts and acts of the Superior Court. San Juan Part, that gave rise to the Judgment challenged herein.

San Juan, Puerto Rico, August 10, 1965.

(s) Vicente Pérez Díaz
Counsel for Petitioner
Box 1155, Río Piedras
Puerto Rico

Affidavit No. 13565

Suscribed and sworn to before me by Vicente Pérez Díaz, Esq., of legal age, married, attorney-at-law, and a resident of this city, who is to me personally known, in San Juan, Puerto Rico, on this 10th day of the month of August 1965.

(s) René Muñoz Padín
Notary Public

IN THE

SUPERIOR COURT OF PUERTO RICO

SAN JUAN PART

The People of Puerto Rico
v.
María Rivera Delgado

Criminal No. M-64-2339
Petit Larceny

JUDGMENT

The apellant charged the trial court with the commission of six errors.

She contends that an error was committed when defendant's motion alleging that the information lacked the essential elements of the crime of petit larceny was dismissed.

Larceny is the felonious stealing, taking, carrying, leading, or driving away the personal property of another; petit larceny is when the value of the property taken is less than one hundred dollars.

The information in this case charges that on June 20, 1964, the defendant unlawfully, wilfully, maliciously, and with a criminal intent, with the purpose of depriving the legitimate owner of the possession and enjoyment of this property, stole from Bargain Town store, 65th Infantry Avenue, Río Piedras, a ladies' purse valued at $2.84 and a lamp valued at $3.64.

The information filed clearly charges the crime of petit larceny, wherefore the first error assigned was not committed.

Appellant alleges that the essential elements of the crime of larceny were not proved and that the evidence introduced by The People was insufficient to convict the defendant of the crime of petit larceny. She alleges, moreover, that the evidence for the defense proved that the defendant did not commit the crime charged.

The Court heard the testimony of Antonio Rodríguez Ocasio who, insofar as pertinent, testified as follows: That he is an employee of Bargain Town, a store located in Sabana Llana, Río Piedras. He is in charge of keeping watch. On June 26, 1964, he was standing in the Ladies' Department of Bargain Town and saw the defendant take a bag, walking away with it, tearing off the ticket and throwing it on the floor. That the witness picked up the ticket. He saw the defendant going towards the Lamp and gave it to a child who was going along with her. The defendant went ahead to the Drug Store where she purchased certain items and paid for them. That the defendant left the store near the last cash register of Bargain Town, where many people were standing in line. That she came out on the other side of the

people, followed by the child. That the defendant carried the bag and the child carried the lamp. That the witness stopped the defendant after she had left the store.

If believed, the testimony offered by this witness is sufficient to prove that the crime of petit larceny was committed and that it was committed by the defendant. The second, third, fourth, and fifth errors were not committed.

Apellant alleges the violation of her substantial rights and of the due of process of law because the trial judge subjected the witnesses to an intense interrogatory.

District Attorney Zoilo Dueño González asks us to reverse the judgment entered in this case. He says in his brief that he has thoroughly and patiently read the transcript of the evidence and that it has ".... led me to the conclusion that actually —and perhaps unconsciously— the Judge who presided the hearing of the case overstretched his mission and consequently, the defendant did not have an impartial and fair trial." "Although the examination of the witnesses for The People could to a certain point be justified if we consider that in that Court the position of prosecuting attorney does not exist and no private prosecuting attorney participated in the case, we must conclude that the cross-examination of the witnesses for the defense went beyond what is reasonable and the Court unconsciously —we repeat— showed apparent prejudice, but predudice nonetheless, detrimental to defendant's rights, discharging a mission that clearly corresponded to the prosecuting attorney, if any."

We do not agree with the prosecuting attorney nor with appellant. We think that the cross-examination to which the witnesses for the defense were subjected did not violate any of defendant's substantial rights nor the due process of law.

The judgment entered against appellant herein by the Río Piedras Part of the District Court, in case No. 64-4897, for the crime of petit larceny, is hereby affirmed.

Let this judgment be served.

San Juan, Puerto Rico, June 24, 1965.

(s) César Bobonis Díaz
Superior Judge

Served:

Hon. District Attorney
San Juan, Puerto Rico

Vicente Pérez Díaz, Esq.
1000 Alesia Street
Puerto Nuevo, P. R.

I attest:

Edgardo Rivera Santini
Clerk

By:

Assistant Clerk
6-25

(same title)

ORDER

The Motion for Reconsideration of the Judgment entered in the above-captioned case, is hereby DENIED.

César Bobonis Díaz
Superior Judge

Served:

Hon. District Attorney
San Juan, Puerto Rico

Vicente Pérez Díaz, Esq.
1000 Alesia Street
Puerto Nuevo, P. R.

I attest:

Doris Morales
Acting Clerk

By:

Assistant Clerk
7-12-65

(same title)

PROSECUTING ATTORNEY'S BRIEF

To the Honorable Court:

The District Court of Puerto Rico, Río Piedras Part,

found the defendant, María Rivera Delgado, guilty of the crime of petit larceny and consequently sentenced her to pay a fine of $25.00 or, in default thereof, to the corresponding subsidiary imprisonment. She appealed. Although her appeal is based on seven errors that could well be reduced to four because some of them practically involve the same issue as others, we shall refer only to Nos. 6 and 7, which may be discussed jointly because of the close relation between them and as to which we think that the accused is right.

> "6. The Honorable trial Judge subjected the defense witnesses to an intense examination of such a nature that it violated the defendant's substantial rights.
>
> "7. The trial court commited error in subjecting the witnesses for the defense to an examination that violated the constitutional right of the defendant to a due process of law."

As may be seen both errors assigned involve the undue participation of the lower court in the cross-examination of the witnesses for the defense, in such a manner that the defendant was deprived of an impartial and fair trial thereby.

In order to determine correctly the facts on which these errors are based, we have thoroughly and patiently read the transcript of the evidence attached to the record which includes all the testimonies offered, both of the witnesses for the prosecution and for the defense, and it has led me to the conclusion that actually —and perhaps unconsciously— the Judge who presided the hearing of the case overstretched his mission and, consequently, the defendant did not have an impartial and fair trial.

Although the examination of the witnesses for the People could to a certain point be justified if we consider that in that Court the position of prosecuting attorney does not exist and no private prosecuting attorney participated in the case, we must conclude that the cross-examination of the witnesses for the defense went beyond what is reasonable and that the Court unconsciously —we repeat— showed apparent prejudice, but prejudice nonetheless, detrimental to

defendant's rights, discharging a mission that clearly corresponded to the prosecuting attorney, if any. Let us see:

The first witness to testify for the defense was Mrs. Francisca Rivera Soto. When the defense was through with said witness, the trial judge began the cross-examination. We quote below part of the cross-examination to which she was subjected. (See middle of p. 4, Transcript of Evidence, 2d part.)

"Judge: Where did you meet Mrs. María Rivera? How did you meet her?
Witness: She is my sister.
J. Hadn't you seen one another that day?
W. No, sir, because I...
J. Did you only see her when she was at the cash register?
W. When she was in the store.
J. Weren't you with her in the store?
W. No, sir.
J. She is your sister, she is in the store, you are, of course, related; didn't you address her, didn't you ask her how she was? 'How is your family?' Nothing? And you saw a man pushing her around and you didn't even attempt to ask that man, 'Listen, why are you pushing my sister?' Nothing at all; rather, you stayed to see how it all ended.
W. Well, because I saw that she was coming to the register to pay for her articles.
J. When you saw that your sister was being pushed around in another direction, didn't you go to see what had happened —you saw that she was being pushed. Were you content just to keep looking at her, didn't you stop to ask, 'Why did you push my sister?'
W. No, sir, I was paying."

It is self evident that the manner in which the trial court conducted that cross-examination was not intended to

clarify or elucitate any doubtful point remaining after the questions asked by defendant's counsel. Rather, it was merely meant to doubt the veracity of what said witness had previously testified, while it must have reasonably been presumed that she was telling the truth, inasmuch as up to that moment nothing to the contrary had been established.

Let us now take up the incident with Mrs. Maggie Rivera, another witness also introduced by the defendant. While counsel for the defense examined her in connection with the testimony she had given to the Judge that had made the preliminary investigation, the Court interrupted counsel for the defense, thus: (See middle of p. 6, Transcript of Evidence.)

"Judge: He is asking you whether you gave the same testimony you are giving now to the Judge that made the investigation—remember that you are testifying under oath. Remember that if you say anything untrue you may be guilty of perjury and that means some 5 years in jail.
Witness: I said that I was behind the lady, that she left the line to take hold of a child, that the man was pushing her and that the child was at the refreshment machine.
Judge: Did you tell that to the investigating Judge?
Witness: Yes, sir."

When counsel for the defense was through examinig that witness, the Judge renewed his cross-examination and asked her, among others, the following questions: (See beginning of p. 7, Transcript of Evidence.)

"Judge: Don't you know her, yes or no?
Witness: No, sir.
J. Haven't you ever seen her?
W. No, sir. I stayed in the store until she was taken to the office. I remained there until she left the office and then I asked her what the matter was.
J. Have you any particular interest in this case?
W. I have no interest, but...

J. You are not related, you do not know one another, yet you were worried about her.

W. Well, one always likes to ask.

J. After you purchased and paid, did you remain there three quarters of an hour to ask about the case?

W. I remained out there until she came out of the store.

J. Was't she paying?

W. I took my package and I went ahead through the store.

J. Didn't you say a 'while ago that you had paid?

W. Yes, sir, I paid. I was leaving when I noticed the incident and I stayed.

J. Did you see her being pushed by a man who was taking her into the store? What did that mean to you? Why were you interested in this matter? Instead of going home you stayed three quarters of an hour roaming about the store. What was your interest in this case?

W. I didn't know her, I am not related to her, and I have no interest in this case.

J. Did you say that you have no interest in this case?

W. None, but since one always likes to learn what is happening, I remained in order to find out what had happened.

J. Do you mean to tell me that after you finished making your purchase, you paid for your merchandise, you remained standing or roaming about the store for three quarters of an hour just to find out what had happened?

W. Well, since one always likes to learn what happens, I remained to see what had happened.

J. (Makes a remark that can not be transcribed.)

W. I did not know why she had been detained or anything.

J. At what time was that?

W. Between half past three and four o'clock.

J. Did you go out ahead of her?

W. She and the child came out, they came out with me.

J. Then, when she came out you went to her and told her, 'Listen, what happened to you?'

W. I asked her what was the matter.

J. You asked her what was the matter without knowing her and without having any interest in the case?

W. I asked her what the matter was.

. . . . . .

J. Did you become interested in the case, are you a protector, have you an agency for the protection of people or something like that?

W. No, sir.

. . . . . .

J. An explanation as to how the child ran to the machine. Tell me, madame, is it true or not that the child was behind her mother waiting in line to pay?

W. The lady (can not understand —can not be transcribed.)

J. Tell me whether or not it is true that the child was behind the lady when she was paying? Because I know that the child moved from the line towards the refreshment stand and her mother or the lady left the line to take hold of her."

The trial court's cross-examination of this witness continued along this same line. What need did the Judge have to detach himself from his position as an impartial trier of facts to become a prosecutor, which mission is reserved by law to the prosecuting attorney?

With respect to the Court's cross-examination of the child, Awilda López, defendent's daughter, as well as of defendant herself —which we do not copy in order not to lengthen this brief— we think that if this Hon. Court reads said testimonies it must unavoidably reach the conclusion that the trial judge went beyond what is reasonable in the sacred mission with which the law entrusts him, thereby depriving the defendant of an impartial and fair trial which our Constitu-

tion as well as our procedural laws guarantee to every defendant.

We think that the instant case presents the same situation involved in **People v. Nieves Alvelo**, decided September 30, 1963; **People v. Martínez Acevedo**, decided April 25, 1963; **People v. Aletriz**, decided June 12, 1962, and **People v. de Jesús Villanueva**, decided May 29, 1964, where, reversing the judgments and ordering new trials for the defendants, our Supreme Court stated:

> "... the trial judge submitted the witnesses to an improper interrogatory that deprived the apellant of an impartial trial and in fact discharged the mission reserved by law to the prosecuting attorney."

WHEREFORE we think, unless this Court has a different opinion, that the judgment rendered in this case must be reversed and that the record must be sent to the District Court of Puerto Rico, Río Piedras Part, for a new trial.

San Juan, Puerto Rico, March 12, 1965.

(s) Zoilo Dueño González
District Attorney

I CERTIFY: That on this same date I sent a copy hereof to Vicente Pérez Díaz, Esq., counsel for the defendant, to his postal address at 1000 Alesia Street, Puerto Nuevo, P. R.

San Juan, Puerto Rico, March 12, 1965.

(s) Zoilo Dueño González
District Attorney

BRIEF

In the common law, larceny had a different meaning, different from the meaning we now have in our statute. Etymologically, in the common law the word "larceny" was

derived from the Norman word "larcyn" —when the French dominated the British— and according to the linguistic connotation of that time it means "a felonious and wrongful taking and carrying away, by any person of the personal goods of another, with felonious intent to convert them to his own use and make them his own property without the owner's consent." Beginning with this original definition in accordance with its linguistic origin, different definitions had been developed and elaborated in judicial decisions. Wharton, defines the crime of larceny as "The fraudulent taking and carrying away of a thing without claim of right, with the intention of converting it to a use other than that of the owner." Wharton, Criminal Law, sec. 862. Bishop, defines it as "The taking and removing, by trespass, of personal property which the trespasser knows to belong either generally or specially to another with the felonious intent to deprive him of his ownership therein; and perhaps it should be added, for the sake of some advantage to the trespasser!" Bishop, Criminal Law, sec. 758.

In the Common Law a distinction was made between the crimes of larceny and false representation, in such a way that the one is not included in the other —they are different crimes. Larceny, as we have seen from its historical meaning and from the definitions of authorities, consists of the unlawful taking of property belonging to another, with the felonious intent of permanently depriving the owner of the property. False representation arises from a legal transaction in which a fraudulent intent or fraud is later discovered.

Let us examine the essential elements of the crime of larceny according to our statute. Section 426, 429; 484 and 488 of California. The taking —as it is called in the California Code— is an essential element, and the taking is a trespass. The taking implies the control of the property coming to the possession of the accused. Kemos v. State, 89 Ala. 52, 7 So. 413; Croom v. State, 7 Ala. 14; People v. Rogers, 22 N.Y. App. Div. 147, 47 N.Y.S. 893; Com. v. Luchis, 99 Mass. 431, 96 Am. Dec. 769. For the taking to be complete the defendant must be beyond the owner's control, except when to

obtain the property there has previously been a trespass; there must be an illegal act at the time of stealing the articles or property. "Nor is possession obtained until the goods are completely severed from the possession and control of the owner". People v. Meyer, 75 Cal. 383, 17 Pac. 431.

Another essential element of the crime of larceny is "carrying away", asportation," which in Spanish is apoderamiento. "In the crime of larceny the possession of the thing stolen is the esential element and it is unnecessary to prove its use." People v. Santiago, 28 P.R.R. 219. In the crime of larceny, the accused takes the merchandise or property illegally from the possession of another. People v. Ríos, 69 P.R.R. 774.

To constitute larceny there must be a trespass. This principle has been clearly elaborated in the decisions of States where the Common Law is prevalent. "To constitute larceny there must be a trespass in the original taking. One who has acquired possession bona fide can not thereafter commit larceny of the thing so possessed." Wright v. Lindsay, 20 Ala. 428; Fulton v. State, 13 Ark. 168, Finlayson v. State, 46 Fla. 81, 35 So. 203; Abrams v. State, 121 Ga. 170, 48 S.E. 965; Johnson v. People, 113 Del. 99; Snapp v. Cam., 82 Ky. 173; People v. Taugher, 102 Mich. 598, 61 N.W. 66; State v. Stone, 68 Mo. 101. People v. Cruger, 102 N.Y. 510, 7 N.E. 555, 55 Am. Rep. 830; State v. England, 53 N.C. 399, 80 Am.Dec. 334; Krause v. Com., 93 Pa.St. 418, 39 Am.Rep. 762; State v. Lindley, 13 S.D. 248, 83 N.W. 257; Hits v. State, 9 Yerg. 198; Jones v. State, 49 S.W. 387; Hill v. State, 57 Wis. 377, 15 N.W. 445.

In the case at bar the owner of the property retained control of the articles and kept them. In this case to constitute the crime of larceny it should have been necessary for the defendant to leave with the articles. She wanted to pay at the cash register —she was not allowed to, and the articles remained as they always had been: in possession of the owner.

Another essential element of the crime of larceny is the criminal intent to deprive the owner permanently of the stolen property. People v. Acevedo, 43 P.R.R. 325. The "animus furandi" must exist. "An essential element in the crime

of larceny is that the thief should have the felonious intent, the intent to steal or **animus furandi**, that is, the intent to deprive the owner feloniously and permanently of his property, at the time of the taking of possession. If such an intent does not exist at the time of the taking, neither is formation afterward nor any subsequent appropriation of the property can make the larceny complete." **People** v. **Brown**, 105 Cal. 66, 38 Pac. 518; **People** v. **Raschke**, 73 Cal. 378, 15 Pac. 13; **People** v. **Jackson**, 133 Cal. 462, 71 Pac. 566; **People** v. **Morino**, 85 Cal. 515, 24 Pac. 892; **People** v. **Jersey**, 18 Cal. 337.

"The intent to steal is the intention to take the goods of another as a thief takes, and theraby to deprive the owner permanently of the use of them. The elements of **animus furandi** have been thus started: the thing must be taken without any fair claim of right, with the intent to appropriate so far as to deprive the owner of it permanently, knowingly, or with the **bona fide** belief that the taking is against the owner's consent and intended disposal of the thing." **Bodee** v. **State** N.Y.L. 149, 30 Atl. 681; **Brite** v. **State**, Tex. Cr. App. 1897, 43 S.W. 342, 344; **State** v. **Caddle**, 35 W.Va. 73, 12 S.E. 1098.

"If without the knowledge or consent of the owner, but with the belief that he will be willing to sell, one takes goods with the intention of regularly paying for them there is no felonious intent and therefore no larceny." **Mason** v. **State**, 32 Ark. 238.

Analyzing the evidence introduced in the trial court, it is clearly evident that the property was obtained with the consent of the owner and in a lawful manner. We have said and analyzed that to constitute the crime of larceny there must be a trespass. There was none in this case.

"The first requisite of larceny is a felonious, fraudulent, or unlawful taking by the thief. A taking of posession by him of goods subject to larceny is an essential element of the offense; there must be such a caption or taking that the accused will acquire dominion over property, enabling him to take actual custody or control thereof, and amounting to a trespass or evidence showing that possession was not obtained in an unlawful manner."

An analysis of the evidence for The People leads us to consider the following questions:

The first witness for The People was Antonio Rodríguez, an employee of Bargain Town:

"Witness: I told her to go to the office with me.
Judge: Did you tell her why?
Witness: Not at the moment.
Judge: What did she do?
Witness: She told me, 'Let's go.'
Judge: What happened in the office?
Witness: In the office we explained to her that she had not paid for that, asking whether she was going to pay for it and she said that she was waiting for her turn to pay for it.
Judge: That she was what?
Witness: That she was waiting in turn beyond the cash register to pay for it. That she was going to pay for it."

This testimony shows that the accused did not have the intent to commit the crime with which she was charged.

In connection with the testimony of the witness for The People — Antonio Rodríguez — the accused testified as follows:

"Witness: Well, I bought a box of Varón Dandy in the drug store, then I went to the purses department and I took a purse and thereafter I went to the lamps department and I took one, returning to the cash register to get into line in order to pay for those two items.
Defense: While you were in the line, what happened?
Witness: While I was standing in line, my child left the line and went to the hall where the machine is located — she was making up her mind. She left with the lamp in her hands.
Defense: What did you do then?

Witness: I left the line, went to the hall looking for her and returned to the line to wait for my turn to pay.

Defense: Did you leave the building at any time?

Witness: No, sir, I was inside the store, in the hall.

Defense: Where were you taken?

Witness: Well, when I was coming back after getting my child from the hall to get into line where I was paying, this man accused me and kept talking to me saying, 'Lady, lady, go this way.' Then I asked him where he was taking me. 'Go on, go on,' and he took me to the office."

. . . . . .

"Witness: Yes, sir. Then the man in the office asked me where I lived. He then told me to pay and leave. I told him then that I was not going to sign the paper he was giving me to sign, but that I was not going to pay either and that I would not leave until the police came — he had threatened me with the police. I told him to bring the police and that then I would leave with his authorization, the policeman's."

We have shown that The People did not prove the essential elements of the crime of larceny, such as trespass, depriving the owner permanently of his property. The acts performed by the accused do not constitute the criminal intent required in the commission of this crime.

The accused was at a disadvantage before the Hon. District Judge by virtue of the type of interrogatory he was conducting. The accused, represented by her counsel, was prevented from raising any objections before the Hon. Judge, under pain of contempt of court. This procedure, in our opinion, violates the constitutional principle of due process of law.

"It is said to be difficult to frame a definition of 'due process of law' which shall be perspicuous, comprehensive, and satisfactory. However, the spirit of these provisions, as applied to criminal prosecutions, is, in brief, that no person

can be made to suffer for a criminal offensive unless the penalty be inflicted by 'due process of law', that is to say in the due course of legal proceedings according to the rules and forms which have been established for the protection of private rights. A criminal prosecution based upon a law which is not in violation of the Constitution, and conducted according to the settle course of judicial proceedings as established by the law of the state, so long as it includes a notice and hearing or an opportunity to be accorded before a court of competent jurisdiction, according to established modes of procedure, is 'due process' in the constitutional sense." **People** v. **Coleman**, 145 Cal. 609, 614, 79 Pac. 283; **Kallock** v. **Superior Court**, 56 Cal. 229, 240; **Hurtado** v. **People of California**, 110 U.S. 516, 535, 28 L.Ed. 232.

The purpose of the constitutional guarantee of the due process of law is to protect citizens against arbitrary actions and abuse of power on the part of the legislative, executive, and judicial branches. It is intended to protect the individual rights of man. It has been so held in California from where our Penal Code came, in **Hutchinson** v. **Caughlin**, 42 Cal. App. 664, 184 Pac. 435; **American Land** v. **Zeiss**, 219 U.S. 47, 55 L. Ed. 82, 31 Sup. Ct. Rep. 200; **Beck** v. **Ransome Crummey**, 42 Cal. App. 74, 184 Pac. 431.

With respect to this problem, the Supreme Court of California has stated:

"The essential rights of the individual can not be taken away by any mere declaration of legislative will. The guaranty is a direct prohibition upon the legislature from passing any law depriving any person or class of person in prison, selling or holding in slavery, or in any other way taking away their liberty or divesting them of property, whether real or personal, except by due process and regular proceeding usually only upon the judgment of a court of justice of competent jurisdiction, rendered in proceedings in which such person shall have had his rights fairly adjudicated in accordance with the established rules of law applicable to such cases." **Cohen** v. **Wright**, 22 Cal. 293.

The provisions of the Fifth and Fourteenth Amendments

to the Constitution of the United States are identical with the provisions of 27 of our Constitution: "No person shall be deprived of his liberty or property without due process of law. No person in Puerto Rico shall be denied the equal protection of the laws." These rights of defendants must be safeguarded by the Courts and can not depend upon the whim of a judge or on the will of a judge working prejudice to the defendant's fundamental rights.

"If his right to a hearing depends upon the will or caprice of others or upon the discretion or will of the judge who is to make a decision upon the issue, he is not protected in his constitutional rights." **Matter of Lambert**, 134 Cal. 626, 86 Am.St.Rep. 296, 55 L.R.A. 856, 66 Pac. 851.

WHEREFORE appellant respectfully prays this Honorable Court to issue a writ of certiorari to review the proceedings conducted in the Superior Court of Puerto Rico, San Juan Part, Criminal Division.

San Juan, Puerto Rico, August 10, 1965.

(s) **Vicente Pérez Díaz**
Counsel for Petitioner
1000 Alesia Street
Puerto Nuevo, Puerto Rico

CERTIFICATE OF SERVICE BY MAIL

I CERTIFY: That on even date herewith, August 10, 1965, I sent by registered mail a duly-stamped envelope addressed to the Hon. Solicitor General of Puerto Rico to his postal address, Department of Justice, San Juan, Puerto Rico, containing a copy of the preceding Petition for Certiorari. In addition, notice has been given to the Hon. César Bobonis Díaz, Superior Judge, San Juan Part, Superior Court, Criminal Section, Santurce, Puerto Rico; and to the Hon. Zoilo Due-

ño González, District Attorney, Superior Court, Criminal Section, Santurce, Puerto Rico.

San Juan, Puerto Rico, August 10, 1965.

(s) Vicente Pérez Díaz
Counsel for Petitioner
Box 1155
Río Piedras, Puerto Rico

(same title)

SOLICITOR GENERAL'S REPORT

To the Honorable Court:

Now comes defendant- appellee, through the Solicitor General, and respectfully states and prays:

SUMMARY OF FACTS

In the District Court of Puerto Rico, Río Piedras Part, on June 25, 1964, an information was filed against María Rivera Delgado, for the crime of petit larceny. 33 L.P.R.A. 1684.

After the corresponding trial, the District Court, Río Piedras Part, found the defendant guilty. It sentenced her to pay a fine of $25.00 or, in default thereof, to the corresponding subsidiary imprisonment.

Feeling aggrieved by the judgment of conviction, the defendant appealed to the Superior Court of Puerto Rico, San Juan Part. To support properly the errors allegedly committed by the District Court, defendant-appellant moved for permission to transcribe the tape recording of the proceedings conducted before the District Court. On November 16, 1964, defendant-appellant submitted to the Superior Court the transcript of the notes taken at the trial.

On January 21, 1965, defendant-appellant filed her brief

in the Superior Court making the following assignmnents of error:

"1. The trial court committed error in dismissing defendant's motion to the effect that the information did not allege the essential elements of the crime of petit larceny.

"2. The Court committed error in refusing to peremptorily acquit the defendant, inasmuch as The People failed to prove the essential elements of the crime of larceny.

"3. The evidence introduced was insufficient to convict the defendant of the crime of petit larceny.

"4. The evidence for the defense showed beyond reasonable doubt that the defendant did not commit the crime with which she was charged.

"5. The evidence for The People and the evidence for the defense show that there is reasonable doubt and such doubt must be decided in favor of the defendant.

"6. The Honorable trial Judge subjected the defense witnesses to an intense examination of such a nature that it violated the defendant's substantial rights.

"7. The trial court committed error in subjecting the witnesses for the defense to an examination that violated the constitutional right of the defendant to a due process of law."

Then, the Hon. District Attorney of San Juan filed his brief answering the issues raised by counsel for defendant-appellant. The prosecution stated in its brief, insofar as pertinent, as follows:

"... Although her appeal is based on seven errors that could well be reduced to four because some of them practically involve the same issue as others, we shall only refer to Nos. 6 and 7 which may be discussed jointly because of the close relation between them and as to which, we think that the defendant is right. Those errors read:

" '6. The Honorable trial Judge subjected the

defense witnesses to an intense examination of such a nature that it violated the defendant's substantial rights.

" '7. The trial court committed error in subjecting the witnesses for the defense to an examination that violated the constitutional right of the defendant to a due process of law.'

"As may be seen both errors assigned involve the participation of the lower court in the cross-examination of the witnesses for the defense, in such a manner that the defendant was deprived of an impartial and fair trial thereby.

"...we have thoroughly and patiently read the transcript of evidence attached to the record which includes all the testimonies offered, both of the witnesses for the prosecution and for the defense, and it has led me to the conclusion that actually — and perhaps unconsciously— the judge who presided the hearing of the case overstretched his mission and, consequently, the defendant did not have an impartial and fair trial.

"Although the examination of the witnesses for The People could to a certain point be justified if we consider that in that Court the position of prosecuting attorney does not exist and no private prosecuting attorney participated in the case, we must conclude that the cross-examination of the witnesses for the defense went beyond what is reasonable and that the court unconsciously —we repeat— showed apparent prejudice, but prejudice nonetheless, detrimental to defendant's rights, discharging a mission that clearly corresponded to the prosecuting attorney, if any. Let us see:"

"

.....

"It is self evident that the manner in which the trial court conducted that cross-examination was not intended to clarify or elucidate any doubtful point remaining after the questions asked by defendant's counsel. Rather, it was merely meant to doubt the veracity of what said witness had previously testified, while it must

have reasonably been presumed that she was telling the truth, inasmuch as up to that moment nothing to the contrary had been established.

"....

"...What need did the Judge have to detach himself from his position as an impartial trier of facts to become a prosecutor, which mission is reserved by law to the prosecuting attorney?

"....

"We think that the instant case presents the same situation involved in **People** v. **Nieves Alvelo**, decided September 30, 1963; **People** v. **Martínez Acevedo**, decided April 25, 1963; **People** v. **Aletriz**, decided June 12, 1962, and **People** v. **de Jesús Villanueva**, decided May 29, 1964, where, reversing the judgments and ordering new trials for the defendants, our Supreme Court stated:

" '...the trial judge submitted the witnesses to an improper interrogatory that deprived the appellant of an impartial trial and in fact discharged the mission reserved by law to the prosecuting attorney.' "

We have examined the original record of the Superior Court. Attached to the record is the transcript of the taped proceedings conducted in the District Court of Río Piedras. The transcript contains —we may say in passing— certain blanks and incoherencies, but in general terms it reflects the fundamental aspects of the proceedings.

Notwithstanding the blanks and incoherencies, a calm and dispassionate analysis of that record reveals that the Hon. District Judge's interrogatory of the witnesses for the defense was merely intended to contradicting and ridiculing them, thereby showing manifest partiality to the prejudice of appellant's substantial rights.

This Hon. Supreme Court, when rejecting the general imputation of "judge-prosecutor" made against the entire judiciary corresponding to our District Court system, stated as follows in **People** v. **Barranco**, decided June 24, 1965:

"The coined phrase 'judge-prosecutor' arises in turn

from a false concept attributed to # 29. This section does not destroy the trier to place in his stead the prosecuting attorney with all the objectives of the prosecuting attorney who pursues conviction. The questioning function imposed on him is not by itself incompatible with that of acting as a judge if in performing said function he is not impropertly imposed purposes and objectives not arising from the statute or not intended by the lawmaker. The right of a judge to question, with or without express provision of law, is inherent in his very function of administering justice and is consecrated in all the systems of jurisprudence not only as a prerrogative but as a duty in his mission of discovering and clarifying the truth. This Court has so held a matter of principle. It has been more exacting and has imposed individual corrective action in cases generally before a jury in the delicate situation where the effect of a judge's intervention beyond the proper limits may convey to the jury his opinion on the facts or on the credibility of the witnesses. **Likewise, there should be individual correction to the district judge who deviates from the law. ....**" (Bold type ours.)

We think that this is one of those cases that demand an individual corrective. By repelling the doubtful behaviour of a particular judge, defiling his condition as an impartial and fair judge, is that we can prevent the attempt to stigmatize "all the district judiciary as one incapable of rendering a just and impartial verdict." **People v. Barranco, supra.**

We have found no legal basis in the evidence in support of the statement of the Hon. Superior Judge, in view of the acquiescence of the District Attorney in the sense that:

"... We think that the closs-examination to which the witnesses for the defense were subjected did not violate any of defendant's substantial rights nor the due process of law."

We think, unless this Court has a better opinion, that

the judgment rendered against the defendant must be reversed and that a new trial must be granted.

San Juan, Puerto Rico, August 26, 1965.

J. B. Fernández Badillo
Solicitor General

(s) Elpidio Arcaya
Assistant Solicitor General

SERVICE

I CERTIFY: That on this same date I mailed a copy of the foregoing Report to Vicente Pérez Díaz, Esq., counsel for defendant-appellant, to his address, Box 1155, Río Piedras, Puerto Rico.

San Juan, Puerto Rico, August 26, 1965.

(s) Elpidio Arcaya
Assistant Solicitor General

(same title)

ORDER

San Juan, Puerto Rico, September 16, 1965.

The foregoing petition for certiorari is hereby dismissed.

It was so ordered by the Court as witnesses the signature of the Acting Chief Justice, who did not participate.

(s) Pedro Pérez Pimentel
Acting Chief Justice

I attest: (s) Ignacio Rivera
Secretary

(same title)

ORDER

San Juan, Puerto Rico, October 22, 1965.

The motion of the Solicitor General of the 19th inst., is hereby denied.

It was so ordered by the Court as witnesses the signature of the Chief Justice. Associate Justices Messrs. Pérez Pimentel, Hernández Matos, and Rigau did not participate.

(s) Luis Negrón Fernández
Chief Justice

I attest: (s) Joaquín Berríos
Acting Secretary

(same title)

ORDER

San Juan, Puerto Rico, November 9, 1965.

The foregoing motion for reconsideration is hereby denied.

It was so ordered by the Court as witnesses the signature of the Chief Justice.

(s) Luis Negrón Fernández
Chief Justice

I attest: (s) Joaquín Berríos
Acting Secretary

IN THE

SUPREME COURT OF PUERTO RICO

The People of Puerto Rico,
Plaintiff-appellee

v. **CE-65-19** **Certiorari**

María Rivera Delgado,
Defendant-appellant

CLERK'S CERTIFICATE

I, Joaquín Berríos, Acting Secretary of the Supreme Court of Puerto Rico, DO HEREBY CERTIFY:

That the foregoing is a true and faithful translation from Spanish into English of all the documents composing the Record on Appeal in the above-captioned case, the originals of which are under my custody in the record of this case in this office.

IN WITNESS WHEREOF and for the purpose of the appeal taken to the Supreme Court of the United States, I issue these presents after cancelling the amount of $11.70 in internal-revenue stamps, in San Juan, Puerto Rico, this 8th day of December 1965.

Joaquín Berríos
Acting Secretary
Supreme Court of Puerto Rico

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 995

MARIA RIVERA-DELGADO,
PETITIONER,

v.

THE PEOPLE OF PUERTO RICO,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

RESPONDENT'S ANSWER

J. B. FERNANDEZ BADILLO
Solicitor General of the
Commonwealth of Puerto Rico
San Juan, Puerto Rico
Attorney for Respondent

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RESPONDENT'S ANSWER

TO THE HONORABLE COURT:

Now comes respondent, The People of Puerto Rico, represented by the undersigned attorney, and respectfully submits the following response pursuant to a request from the Court of March 28, 1966.

Statement of the Case

The facts of the case were summarized in the Solicitor General's Report to the Court below which has been reported in pages 37-42 of the Petition for Writ of Certiorari. A brief recital of said facts follows:

On June 25, 1964, in the District Court of Puerto Rico, Rio Piedras Part, an information was filed against petitioner for the crime of petit larceny.

After trial, the Court found petitioner guilty and sentenced her to pay a fine of $25.00 or, in default thereof, to imprisonment of one day in jail for each unpaid dollar.

Appeal was taken to the Superior Court of Puerto Rico, San Juan Part. To properly support the errors allegedly committed by the District Court, petitioner submitted to the Superior Court a transcript of the tape recording of the proceedings together with the notes taken at the trial.

Among the points of error raised by petitioner before the Superior Court the following were the most important:

. . . . . .

"6. The Honorable trial Judge subjected the defense witnesses to an intense examination of such a nature it violated the defendant's substantial rights.

7. The trial court committed error in subjecting the witnesses for the defense to an examination that violated the constitutional right of the defendant to a due process of law."

In his brief, answering the above issues raised by petitioner, the Honorable District Attorney of San Juan conceded that petitioner's fundamental right to a fair trial under due process of law had been violated. He concluded that the judgment rendered by the District Court

was wrong and that the same should be reversed. Nevertheless, the Superior Court dismissed petitioner's appeal.

Petition for writ of certiorari was then subsequently filed by petitioner before the Supreme Court of Puerto Rico.

After a thorough study of the whole proceedings, the undersigned Solicitor General of the Commonwealth of Puerto Rico was of the opinion that the Hon. District Judge's interrogatory of the witnesses for the defense was intended to contradict and ridicule them, thereby showing manifest partiality to the prejudice of petitioner's substantial rights.

So we begged the Hon. Supreme Court of Puerto Rico to reverse the judgment rendered and to grant a new trial. The petition for certiorari was nevertheless denied. To review said resolution, rendered on September 16, 1965, petitioner asks this Court to grant certiorari.

Solicitor General's Position

As the petition for certiorari before this Court shows, the Solicitor General of Puerto Rico was in accord that the judgment of the Superior Court should be reversed and, of course, also the judgment of the District Court. This is again our position now before this Hon. Court and therefore we concede that the petition for a writ of certiorari should be granted and the judgment of the Supreme Court of Puerto Rico reversed.

The Supreme Court of Puerto Rico in *The People of Puerto Rico* v. *Cayetano Barranco,* decided June 24, 1965,[1] upheld the constitutionality of the judiciary system of Puerto Rico which permits our District Courts to deal with all criminal actions without the assistance of public or

[1] The opinion has not been yet officially reported. An English translation is herein attached as Appendix 1.

private prosecuting attorneys. In the case of *Barranco* the attack was on the entire system as such and not on the basis of the absence of a fair trial as a result of the conduct of the judge in the particular case. The court rejected the attack and found that there was no basis for institutionally stigmatizing all the district judiciary as one incapable of rendering a just and impartial verdict. The Court, nevertheless, acknowledged the need of individual corrective action in the delicate situation of cases where the effect of a judge's intervention beyond the proper limits may prejudice a defendant and deny him a fair trial.

We considered the present case not one in which the whole system was under attack, but one of those cases which demanded an individual correction precisely to prevent the generalization of stigma to the whole of the district judiciary.

The judge in the present case submitted the witnesses to an improper interrogatory that deprived petitioner of an impartial trial and in fact discharged the mission reserved by law to the prosecuting attorney. *In Re Murchison,* 349 U.S. 133. The portions of the record cited by the District Attorney in his brief to the Superior Court (Petition, pp. 26-28) are enough to demonstrate the judge's role as prosecutor.

Conclusion

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted and the judgment of the Supreme Court of Puerto Rico be reversed.

Respectfully submitted,

J. B. Fernandez-Badillo
Solicitor General of the
Commonwealth of Puerto Rico
Attorney for Respondent

APPENDIX I

IN THE SUPREME COURT OF PUERTO RICO

CE-63-31

THE PEOPLE OF PUERTO RICO,
PETITIONER, APPELLANT
v.
CAYETANO BARRANCO, ETC.,
DEFENDANTS, APPELLEES

CERTIORARI

MR. JUSTICE SANTANA BECERRA delivered the opinion of the Court.

San Juan, Puerto Rico, June 24, 1965

In the case of Cayetano Barranco, Judge Filiberto Santiago, of the District Court, Cayey Part, sentenced him to serve three months in jail for aggravated assault and battery after a trial on the merits. In the District Court defendant challenged the validity of the proceedings on the ground, *inter alia,* of violation of the due process of law guaranteed by the Fifth Amendment of the Constitution of the United States and § 7 of Article II of the Constitution of the Commonwealth of Puerto Rico; separation of powers set forth in § 2 of Article I of the Constitution of the Commonwealth, and the right to an impartial and fair trial to which every accused is entitled.

In the case of Juan Bones Gonzalez, in the District Court, Guayama Part, at a hearing in Arroyo, Judge Filiberto Santiago, after a trial on the merits, sentenced him to pay $200 or, in default thereof, 90 days in jail for violation of the Traffic Law. When the first witness for the prosecution began to testify the defense objected to each and every one of the questions made by the presiding judge on the ground that he was acting as a

prosecuting attorney, thus violating the due process of law. He requested that henceforth each and every one of the questions of the Magistrate be considered as objected. In the case against Barranco, before pronouncement of sentence, the defense filed a memorandum in support of his objections.

An appeal was taken from both decisions to the Superior Court, Guayama Part. Barranco submitted his appeal on the same brief filed in the District Court. Bones submitted his appeal on a sole assignment of error to the effect that the District Court erred when the presiding judge acted as judge and prosecuting attorney. Both cases were decided by the Superior Court, Guayama Part, in a single opinion and judgment. The court reversed the judgments appealed from and ordered that new trials be held "in a manner compatible with the terms of this opinion, that is, with the assistance of a prosecuting attorney and before a judge not acting as a prosecuting attorney." On petition by the People we issued a writ of *certiorari* to confront the question raised.

In its opinion the trial court stated:

> "In both cases, after defendants pleaded not guilty and the witnesses for the prosecution and the witnesses for the defense were sworn the judge called for the oral evidence of the prosecution, he conducted the direct examination thereof, and counsel for the defense conducted cross-examination. The oral evidence for the defense having been introduced, the judge cross-examined the witnesses after which defendants moved for their acquittal because throughout the entire proceeding the judge had acted as judge and prosecuting attorney, thereby violating their right to an impartial trial as guaranteed by the Constitution of the United States and the Constitution of the Commonwealth of Puerto Rico. . . .

"In their briefs appellants raise the question that the trial court committed a reversible error in depriving them of a fair and impartial trial since the trial judge presiding the hearing acted in the dual capacity of trier and prosecutor at the same time.

"Defendants-appellants are right.

"It is a true fact that at the hearing of the cases at bar the trial judge acted as judge and prosecuting attorney in the same manner as any judge of the District Court of Puerto Rico presiding that hearing would have acted. And it is a true fact that in trials of all penal cases which are held in the different parts of said court the judges act as judges and prosecuting attorneys at the same time, whenever a defendant pleads not guilty, except when, in rare occasions, upon complainant's petition a special private prosecuting attorney is called to act and his fees are paid by the latter.

"Such is the situation and has been for many years, not by the whim or will of the judges in question, but by operation of a lofty system which entered the hierarchy of law approved March 12, 1903, as subsequently amended and which appears in 34 L.P.R.A. §§ 58 and 59.

"Of course, the fact that the district judges are authorized by law to act as judges and prosecuting attorneys simultaneously as afore-stated, does not mean that said action does not fundamentally impair defendant's right to a fair and impartial trial, nor does it mean either, that the judges are impartial because in so acting they obey an order of the law . . . .

"If in said criminal prosecution the services of the prosecuting attorney are dispensed with and the judge is authorized to assume his function, the trier ceases

to be a mere judge to become a judge-prosecutor. As such he represents the State, and as he himself is an interested party against defendant, the judge acting as prosecuting attorney is the interested party against defendant. This combination of incompatible functions defeats the impartiality of the judge fundamentally undermining the foundations of the fair trial to which every defendant is entitled. As the judge, in his role of prosecuting attorney, is actively interested in showing with the evidence which he himself introduces and with the evidence for the defense, which he controverts and rebuts, that defendant is guilty beyond a reasonable doubt, he can not, in his role as trier, prevent his mind, human after all, from being subjected to the laws of psychological science and to lose, partly or entirely, the notion of impartiality that should characterize his delicate mission during the trial. How can the trier act impartially and fairly unfolding himself to weigh, as prosecuting attorney, the evidence for the prosecution and the evidence for the defense, and unfolding, in his turn, on the other hand, to hear the same evidence as judge? If the verdict is guilty it is blemished by the inquisitorial proceeding on which his verdict is grounded and which lacks the validity of the verdict which is the culmination of a fair and impartial trial. The judicial drama staged is a sad tragedy in which the trier's impartiality has been broken into a thousand pieces by the trier himself under the underlying system of the law. The human dignity of the accused has been flouted. And the cause of democracy has suffered an upheaval as a result of this juridical monstrosity.

"Such is the anomaly of our juridical system which emanates from said Act of 1903 and provides that

the judges of the District Court of Puerto Rico shall act as judges-prosecutors in the criminal cases within their province when the defendant pleads not guilty. Such is the tragedy of the judicial drama involved in each one of such cases in which the impartiality of the trier is put to flight and defendant's fundamental right to a just and fair trial is spurned. And since it is impossible to have a fair and impartial trial before a judge who is not impartial and unbiased under the juridical system in question the foundations of democracy are shaken.

"The great North American jurist, Jerome Frank in his book, Courts and Trials said: 'Democracy must, indeed, fail unless our courts try cases fairly, and there can be no fair trial before a judge lacking in impartiality and disinterestedness.'

"It is true that the afore-stated inquisitorial system granted defendant, by the same Act of its creation in 1903, as a compensatory remedy, the right to appeal and be tried in a Superior Court in a trial *de novo*. At this trial defendant-appellant was guaranteed a fair and impartial trial held before an impartial and disinterested judge without the latter having to act as prosecuting attorney, since an official, the prosecuting attorney represented the People of Puerto Rico. And although in order to obtain the right to a trial *de novo* before said impartial and disinterested judge defendant must have been convicted and sentenced by the judge-prosecutor in question, to serve a term in jail or to pay a fine, at least, the right to a trial *de novo* served to cure the constitutional defect of the trial held before the judge-prosecutor. But with the enactment of the Judiciary Act on July 24, 1952, the right to a trial *de novo* disappeared and in lieu thereof appeal to a Superior Court was granted

which does not authorize the holding of any other trial, said appeal being limited to the review of the proceedings had in the District Court. That is, said Judiciary Act established the system of the criminal trial before a judge-prosecutor of the District Court which deprives defendant of a trial *de novo*.

"What sort of fair and just trial could appellants expect in a District Court presided by a judge-prosecutor, who in the discharge of his duty as such was determined to prove, not just passively, but affirmatively, that defendants were guilty of the crime charged against each one of them? With the system of judge-prosecutor, a link which juridically connects Puerto Rico to the Middle Ages, defendants could not have, and did not have, the impartial trial warranted by the Constitution of the Commonwealth of Puerto Rico . . . [Reference is made to Rule 159(b) of the Rules of Criminal Procedure of 1963].

"We ask: Will the next generation endure such a retrogressive and archaic system which permits a judge-prosecutor to deprive defendant of the fair trial to which he is entitled?

The present system of criminal trial in the District Court is unconstitutional insofar as said system permits a judge to act as judge and prosecuting attorney at the same time in a prosecution where defendant pleads not guilty and the trial is held without the assistance of a public or private prosecuting attorney on behalf of the People of Puerto Rico.

"The judgments appealed from will be reversed and a new trial ordered for each defendant-appellant, which new trial will be held in harmony with the terms of this opinion, that is, with the assistance of a prosecuting attorney and before a judge not acting

as prosecuting attorney." Here ends the judgment of the trial court.

The judge described as judge-prosecutor and the proceeding described as not fair and impartial are the judge and the proceeding referred to in §§ 28 and 29 of the Code of Criminal Procedure of 1902.

Section 28 provides that when a defendant is put upon trial, should he refuse to answer or to plead to the complaint the justice shall enter a plea of "not guilty" and shall proceed to examine witnesses "to determine from the evidence whether defendant be guilty or not guilty."

Section 29 provides that if defendant pleads not guilty the justice of the peace shall proceed as follows: he shall examine under oath the witnesses for the prosecution and the witnesses for the defendant, including the defendant himself if he wishes to testify, and if he does not testify that fact cannot be used against him. The witnesses for the prosecution may be called to rebut any testimony, and for no other purpose. The judge shall render his judgment taking into consideration the evidence adduced, and the trial must be had and the judgment rendered in the presence of the defendant, except in cases of offenses not implying mental perversity or moral depravity or when he is represented by counsel.[1]

The judgments of conviction and the absence of a fair trial have not been attacked as a result of the conduct of the judge or of specific occurrences of defendants in these particular cases. The entire system of procedure has been

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[1] 34 L.P.R.A. § 58, 59. See Rule 159(b) of the Rules of Criminal Procedure of 1963. The Act of March 10, 1904 which reorganized the judiciary system created the position of municipal judge (District) having the duties and functions of the justice of the peace; and the Act of May 28, 1904 provided that the procedure to be followed in criminal trials before the municipal courts shall be the same as those provided for criminal cases in the justices of the peace courts. See *People* v. *Rivas*, 16 P.R.R. 581.

attacked and condemned as being on the margin of the process of law incapable of producing a fair and impartial verdict.

Since it is the system that is being tried and condemned, the reason for its condemnation must stem from the system itself. It is inescapably necessary to have knowledge of its fruits in order to be prepared, with full consciousness and sense of responsibility to condemn or acquit it of the charge. He must, therefore, resort to the only evidence capable of evaluating it against the attack, which is its own expression, although we regret to indulge in an arid exposition of figures.

Let the system speak for itself, and let the conscience of the district judge speak for itself too:

1. In the year 1963-64, of 223,874 criminal cases disposed of (not removed) there was plea of guilty in 134,709 cases, leaving 89,165 in litigation for the decision of the judge. Of the 89,165 cases in litigation 48,070 were dismissed and 41,095 remained for the decision on the merits. Of these 41,095 the judge rendered judgment of conviction in *11,219* cases and acquitted *29,876*. Of the 89,165 cases where there was no plea of guilty but action by the judge, the People did not prevail, dismissals and acquittals, in 77,946 cases.

In view of the fact that the traffic cases present quite different characteristics and peculiarities and that the evidence depends to a greater extent on the testimony of the Police, we consider the situation as to traffic separately:

2. In the year 1963-64, of 142,674 traffic cases disposed of (not removed) there was plea of guilty in 98,869 cases, leaving 43,805 in litigation for the action of the judge. Of these 43,805 cases 30,758 were dismissed, 13,047 remaining for the decision on the merits. Of these 13,047 the judge rendered judgment of conviction in *3,103* and judgment of acquittal in 9,944.

3. Following identical order of analysis the preceding years up to 1953-54 invariably show an identical pattern of behavior and attitude of the district judge:

	In litigation:	*Dismissed*:	*Convicted*:	*Acquitted*:
1962-63	66,529	32,658	9,041	24,830
Transit	35,575	22,504	2,763	10,308
1961-62	71,986	32,233	10,660	29,093
Transit	33,476	20,422	2,433	10,621
1960-61	70,580	30,068	10,427	30,085
Transit	31,250	18,238	2,400	10,612
1959-60	54,452	17,143	10,216	27,093
Transit	15,704	6,075	1,820	7,809
1958-59	56,314	16,740	10,655	28,919
Transit	16,498	6,089	1,659	8,750
1957-58	53,528	17,165	10,391	25,972
Transit	15,860	5,787	2,038	8,035
1956-57	60,535	25,471	11,421	23,643
Transit	20,559	11,209	2,154	7,196
1955-56	52,491	13,992	12,522	25,977
Transit	14,491	4,839	2,238	7,414
1954-55	49,942	7,956	14,534	27,452
1953-54	52,134	9,198	16,449	26,487
Totals:	588,491	202,624	116,316	269,551

Of the 116,316 convictions by the judge 7,931 were taken on appeal to the Superior Court. Of those 7,931, 3,702 were dismissed and abandoned. Of the 4,229 considered on the merits *2,989* were affirmed and 1,240 were reversed or remanded.

4. A comparison with the Superior Court where the People is represented by a prosecuting attorney:

	Convictions:		*Acquittals*:	
	Jury:	*Judge*:	*Jury*:	*Judge*:
1963-64	632	3,047	555	3,309
1962-63	450	2,089	418	2,588
1961-62	414	2,467	488	2,328
1960-61	325	1,811	385	1,719
1959-60	224	2,180	341	1,420
1958-59	279	1,544	287	1,095
1957-58	224	1,271	233	977
1956-57	263	1,423	296	971
1955-56	245	1,579	249	1,038
1954-55	287	1,498	239	1,048
1953-54	298	1,344	259	999
	3,641	20,253	3,750	17,491
TOTALS:	23,894		21,241	

Those figures restore the peace of mind, which must have naturally felt the impact of the judgment of the lower court in which the justice of the district court is stigmatized with harsh tones. The 269,551 acquittals in 385,867 cases tried on the merits against 116,316 convictions belie the existence of a district judge whose impartiality "has been broken into a thousand pieces by the trier himself" for the reason that he examines the witnesses for the prosecution and for the defense under § 29. They belie the existence of a district judge who has flouted "the human dignity of the accused" because he had the duty to examine the witnesses at the trial. They belie the fact that those 385,867 prosecutions have been a "sad tragedy" and a tragic juridical drama in which defendants

were deprived of an impartial and fair trial. They belie the fact that by reason of the examination ordered by § 29, the district judge is a "judge-prosecutor" who is "determined to prove" . . . "affirmatively" that defendants before him are guilty.

They disprove the fact that by reason of the examination permitted by law, the district judge becomes, at the trial presided by himself, a prosecuting attorney for the sole object and purpose contemplated by a prosecuting attorney, that of "*showing* with the evidence which he himself introduces and with the evidence for the defense, which he controverts, that defendant is guilty beyond a reasonable doubt" and they disprove that the impartiality of the trier has been put "to flight".

If we consider the mission of the public prosecutor whose principal function and responsibility is to investigate and prosecute the commission of the offense and bring the offender before the judicial power for his prosecution and there prove his guilt,[2] those figures show that the district judge maintained his impartiality as a trier.

The questioning function of the prosecuting attorney during a trial, which may be performed by any other attorney in representation of The People—§ 232, subd. 3, Code of Criminal Procedure, 34 L.P.R.A. § 712(3)—the only one keeping any relation with the duties of the judge under § 29 is not his exclusive action, nor that which defines him as the public officer in charge of the investigating and prosecuting the offense. To add the name of prosecutor to that of the judge and then attribute to him, by reason of § 29, the purpose thereof, acting also as a trier, is, at the very least, a lack of reflection evidenced by those comparative figures of acquittals after a trial on the merits, and by those figures of dismissals in which

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[2] Sections 67-70; 95-109 as amended, of the Code of Criminal Procedure 1935 ed.; 34 L.P.R.A. §§ 122-125, 171-183, amended.

to a great extent judgment is passed and judicial discretion is exercised.

Judged by its own fruits as revealed by those facts, the district judiciary has proved by itself the inexistence of a judge who is unable under the juridical rule or under "the laws of psychological science" to try and render judgment on the evidence as weighed by him and dictated by his conscience, and give defendant the benefit of the doubt in his unique position as disinterested trier, notwithstanding the provision of § 29.

If anything has been proved, over 4/5 of all the cases dismissed or acquitted where there was no plea of guilty, it is the disadvantageous position of the People at the level of the district judge for lack of a prosecuting attorney. If anything else is proved in relation to the proportion of acquittals on the merits of a trial to the convictions—269,551 to 116,316—within a period in which the trial *de novo* had already been abolished, and compare the proportion in the Superior Court where they have the prosecuting attorney representing The People—2,762 more convictions by the judge than acquittals,—if anything is proved, we repeat, it is that the judge was not sufficiently inquisitive in his questioning function due to his scruples of not assuming as a trial judge the role of the prosecuting attorney, an office lacking in the district judiciary.

This is the picture of acquittals even years before our decision in *People* v. *Toro,* decided on February 9, 1962, 84 P.R.R. 473, when generally, the judge, passing on judgment, had investigated the cause and ordered the proceeding, and had heard beforehand the testimony of the witnesses. After the decision in *Toro*, where the judge hears the witnesses when they take the witness stand at the hearing in the presence of defendant legally represented, there would still be less ground to stigmatize the

justice of the district court as a juridical monstrosity which links us to the Middle Ages.[3]

It must not be understood that we not even insinuate that had the result been to the contrary, equal or greater proportion of convictions, we would have declared the impeachment to be valid. Trial resulting in convictions are not thereby less just and fair as those resulting in acquittals may not be thereby more just. But the Law does not function abstractedly from the laws of cause and effect of the philosophy, and, as every science, it demands that the deductive process be rational and logical.

In a system of administering justice which is condemned because it produces the figure of a judge impaired as an impartial judge, who, in performing the legal functions at the trial only pursues the conviction of defendant, there should be, in good logic, rare cases of acquittals. In this sense alone, and in no other, we have presented the comparative figures, without it being insinuated that in this or any other judiciary such as that of the Superior Court, a greater proportion or excess of convictions implies, as a rule, the absence of the impartial trial.

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[3] In the procedure system of continental Europe nowadays it is normally the judge who does all the questioning. The Anglo-saxon system, although different, absolutely does not deny said right. Administration of Criminal Law 199 et seq. (1953).

We have prepared the data from the tables attached to the Annual Reports of the Administrative Director of the Office of Court Administration published from the years 1953-54 to 1963-64.

During the period from July 1, 1964 to March, 1965 the pattern remains unaltered. Of the 177,461 cases disposed of (not removed) there were 126,593 pleas of guilty, leaving 52,868 in litigation for decision by the judge. Of those, 26,613 were dismissed and 26,255 remained for decision on the merits in trial. Of these 26,255 the judge convicted 7,247 and acquitted 19,008.

On traffic: Of 25,800 which remained in litigation 16,417 were dismissed and 9,386 remained to be decided on the merits in trial. Of these 9,386, 2,023 were convicted and 7,360 were acquitted. Data compiled by the Administration.

The error of approach committed by the trial court and likewise by others who have voiced their opinion, arises from the concept, wrongly and thoughtlessly, coined of the "judge-prosecutor" referring to the district judge. Once the entelechy is created the speculation evolved around it seems to be logical, but it is not. The concept is false, the speculation is false.

The coined phrase "judge-prosecutor" arises in turn from a false concept attributed to § 29. This section does not destroy the trier to place in his stead the prosecuting attorney with all the objectives of the prosecuting attorney who pursues conviction. The questioning function imposed on him is not by itself incompatible with that of acting as a judge if in performing said function he is not improperly imposed purposes and objectives not arising from the statute or not intended by the lawmaker. The right of a judge to question, with or without express provision of law, is inherent in his very function of administering justice and is consecrated in all the systems of jurisprudence not only as a prerogative, but as a duty in his mission of discovering and clarifying the truth. This Court has so held as a matter of principle. It has been more exacting and has imposed individual corrective action in cases generally before a jury in the delicate situation where the effect of a judge's intervention beyond the proper limits may convey to the jury his opinion on the facts or on the credibility of the witnesses. Likewise, there should be individual correction to the district judge who deviates from the law.[4] This is not the institutional problem under consideration.

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[4] *People* v. *Bartolomei*, 70 P.R.R. 664; *People* v. *Aletriz*, 85 P.R.R. : *People* v. *Matos*, 81 P.R.R. 496; *People* v. *Tea*, 84 P.R.R. 37; *People* v. *Rivera*, 71 P.R.R. 115; *People* v. *Rodriguez*, 65 P.R.R. 497; *People* v. *Gonzalez*, 61 P.R.R. 336; *People* v. *Pierantoni*, 60 P.R.R. 13; *People* v. *Alvarado*, 55 P.R.R. 24; *People* v. *Montanez*, 54 P.R.R. 810; *People* v. *Saltari*, 53 P.R.R. 850; *People* v. *Quiles*, 41 P.R.R.

Still more important, the error in the approach arises from the misunderstood concept which places the impartiality of the proceeding on merely external forms, when it should be sought where it actually lies, in the simple and honest conscience of the trier. The external forms deny impartiality to the proceeding when they prevent that the whole truth be brought before the judge, because even, under improper procedural guides, a good judge does justice.

Toro, supra, and *Murchison* are insistently invoked. *In Re Murchison,* 349 U.S. 133. There is no similarity. *Murchison* upholds the principle, in the presence of extreme facts, that no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. A judge in the course of a secret investigation acting as a judge-grand juror reaches the conclusion that two persons have committed contempt and perjury before him and files a complaint for contempt against them. Then he tries them. In order to convict them he had to complete the record with facts relating to the occurrence in the private chambers. Against said evidence the convicts did not have the opportunity to exercise their right of cross-examination.

The situation in *Toro* was not as sharp as in *Murchison.* However, we wanted to eliminate the ever present danger of having a district judge who has previously investigated a case to judge it under the influence of the opinion formed during the investigation and filing of the corresponding complaint, and not solely on the evidence introduced at the trial with the opportunity of being cross-examined. Even so, according to the afore-mentioned figures it seems

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904; *People* v. *Tirado,* 38 P.R.R. 795; *People* v. *Acevedo,* 35 P.R.R. 886. See the situation in *McIntosh* v. *People of Virgin Islands,* 83 F.2d 380. The exposition in *State* v. *Keehn,* (Kan.) 118 Pac. 851.

that in the era preceding *Toro* the district judge rendered judgment as a rule on the evidence in the proceeding.

None of these cases institutionally stigmatizes all the district judiciary as one incapable of rendering a just and impartial verdict.

The judgments appealed from will be reversed and the cases will be remanded to the trial court with instructions to render other judgments affirming those entered by the District Court, Cayey and Guayama Parts.